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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/728,043

12/01/2000

Dan Anthony Balogh

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LUCENT TECHNOLOGIES INC.

DOCKET ADMINISTRATOR

101 CRAWFORDS CORNER ROAD - ROOM 3J-219

HOLMDEL, NJ 07733

EXAMINER

LY, NGHI H

ART UNIT

PAPER NUMBER

2617

DATE MAILED: 06/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/728,043	<b>Applicant(s)</b> BALOGH ET AL.	
	<b>Examiner</b> Nghi H. Ly	<b>Art Unit</b> 2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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The Art Unit location of your application in the USPTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Art Unit 2617.

**DETAILED ACTION**  
***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

2. Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnes et al (US 5,613,196) in view of Sonetaka (US 6,591,107).

Regarding claim 1, Barnes teaches a method of sharing supplemental channel resources (Abstract and column 12, lines 27-41, and column 17, lines 6-16, see "*preassigned backup channel*". Barnes' "*backup channel*" reads on

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Applicant's "*supplemental channel*") in a system utilizing open assignment (see Abstract, column 17, lines 6-12 and see column 24, lines 62-65) and prospectively assigning channel resources are available for prospective assignment (see column 17, lines 6-16, see "*preassigned backup channel*". Barnes' "*preassigned*" reads on Applicant's "*prospectively assigning*").

Barnes does not specifically disclose open waiting states for responding to a resource request, the method comprising the steps of: receiving a data notify request indicating a request for channel resources, and prospectively assigning currently unavailable channel resources to support a future channel for a user associated with the received data notify request if the data notify request was received during an open assignment state during which the currently unavailable channel resources are available for prospective assignment.

Sonetaka teaches open waiting states (see Abstract, "occupied") for responding to a resource request (see column 4, lines 43-45), the method comprising the steps of: receiving a data notify request indicating a request for channel resources (see column 4, lines 43-51), and prospectively assigning currently unavailable channel resources to support a future channel for a user associated with the received data notify request if the data notify request was received during an open assignment state during which the currently unavailable channel resources are available for prospective assignment (Abstract, see "*assigning channel preserved in advance*", and column 4, lines 62-65, see column 7, line 65 to column 8, line 2. In addition, applicant's claimed limitation

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recites “if”, the term “if” means not actually happen. Therefore, the Examiner is not required to respond to this claimed limitation).

Therefore, it would have been obvious to one of the ordinary skill in the art at the time the invention was made to provide the teaching of Sonetaka into the system of Barnes in order to assign radio channel to traffic having a high service rank (see Sonetaka, column 1, lines 50-53).

Regarding claim 2, Barnes further teaches determining whether other supplemental channel resources are available if the data notify request was not received during the open assignment state (see Abstract, see “availability”).

Regarding claim 3, Sonetaka further teaches assigning the other supplemental channel resources to the user if the other supplemental channel resources are available (see column 1, lines 54-63).

Regarding claims 4 and 6, Barnes teaches supplemental channel resources (Abstract and column 12, lines 27-41, and column 17, lines 6-16, see “*preassigned backup channel*”. Barnes’ “*backup channel*” reads on Applicant’s “*supplemental channel*”).

Barnes does not specifically disclose scheduling a next data notify request to be issued for the user in a next preferred user assignment window associated with the other channel resources, the preferred user assignment window corresponding to a time period during which a current user may be scheduled to issue a data notify request.

Sonetaka further teaches scheduling a next data notify request to be issued for the user in a next preferred user assignment window associated with the other channel

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resources, the preferred user assignment window corresponding to a time period during which a current user may be scheduled to issue a data notify request (see column 4, lines 29-34).

Therefore, it would have been obvious to one of the ordinary skill in the art at the time the invention was made to provide the teaching of Sonetaka into the system of Barnes in order to assign radio channel to traffic having a high service rank (see Sonetaka, column 1, lines 50-53).

Regarding claim 5, Regarding claims 4 and 6, Barnes teaches supplemental channel resources (Abstract and column 12, lines 27-41, and column 17, lines 6-16, see *"preassigned backup channel"*. Barnes' *"backup channel"* reads on Applicant's *"supplemental channel"*).

Barnes does not specifically disclose determining whether the currently unavailable channel resources are in an open waiting state during which the currently unavailable channel resources are not available for prospective

Sonetaka further teaches determining whether the currently unavailable channel resources are in an open waiting state during which the currently unavailable channel resources are not available for prospective assignment (see column 7, line 65 to column 8, line 2).

Therefore, it would have been obvious to one of the ordinary skill in the art at the time the invention was made to provide the teaching of Sonetaka into the system of Barnes in order to assign radio channel to traffic having a high service rank (see Sonetaka, column 1, lines 50-53).

Regarding claim 7, Regarding claims 4 and 6, Barnes teaches supplemental channel resources (Abstract and column 12, lines 27-41, and column 17, lines 6-16, see *"preassigned backup channel"*. Barnes' *"backup channel"* reads on Applicant's *"supplemental channel"*).

Barnes does not specifically disclose scheduling a next data notify request for the user to be issued if the currently unavailable channel resources are not in the open waiting state.

Sonetaka teaches scheduling a next data notify request for the user to be issued if the currently unavailable channel resources are not in the open waiting state (see column 8, lines 38-44).

Therefore, it would have been obvious to one of the ordinary skill in the art at the time the invention was made to provide the teaching of Sonetaka into the system of Barnes in order to assign radio channel to traffic having a high service rank (see Sonetaka, column 1, lines 50-53).

Regarding claim 8, Barnes further teaches determining whether the user is a current user of supplemental channel resources (Abstract and column 12, lines 27-41, and column 17, lines 6-16).

Regarding claim 9, Regarding claims 4 and 6, Barnes teaches supplemental channel resources (Abstract and column 12, lines 27-41, and column 17, lines 6-16, see *"preassigned backup channel"*. Barnes' *"backup channel"* reads on Applicant's *"supplemental channel"*).

Barnes does not specifically disclose reducing a continuation count for the user if the user is a current user and scheduling when to issue a next data notify request for the user based on the continuation count.

Sonetaka teaches reducing a continuation count for the user if the user is a current user and scheduling when to issue a next data notify request for the user based on the continuation count (see column 4, lines 43-51).

Therefore, it would have been obvious to one of the ordinary skill in the art at the time the invention was made to provide the teaching of Sonetaka into the system of Barnes in order to assign radio channel to traffic having a high service rank (see Sonetaka, column 1, lines 50-53).

3. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barnes et al (US 5,613,196) in view of Sonetaka (US 6,591,107) and further in view of Vanderspool, II et al (US 5,261,118).

Regarding claim 10, the combination of Barnes and Sonetaka teaches the step of prospectively assigning the currently unavailable supplemental channel resources (see Abstract and see column 4, lines 62-65).

The combination of Barnes and Sonetaka does not specifically disclose determining if a first data rate is different from a second data rate, the first data rate being associated with the currently unavailable supplemental channel resources, the second data rate being associated with the future supplemental channel.



Vanderspool teaches determining if a first data rate is different from a second data rate, the first data rate being associated with the currently unavailable supplemental channel resources, the second data rate being associated with the future supplemental channel (see column 10, lines 44-51).

Therefore, it would have been obvious to one of the ordinary skill in the art at the time the invention was made to provide the teaching of Vanderspool into the system of Barnes and Sonetaka in order to provide time synchronization of data transmissions generated from the transmission stations.

### ***Response to Arguments***

4. Applicant's arguments filed 03/23/06 have been fully considered but they are not persuasive.

On pages 2 and 4 of applicant's remarks, applicant argues that Barnes's backup channels are not supplemental channels and felt that Barnes (or Sonetaka) does not teach supplemental channel.

In response, Barnes's "backup channels" are supplemental channels and Barnes's "backup channels" reads on applicant's "supplemental channels" (see answers.com for the definition of the term "supplemental").

On page 2 of applicant's remarks, applicant further argues that open waiting state corresponds to a scheduling state and Barnes does not teach open waiting states.

First: Sonetaka's Abstract, discloses "assigning channel preserved in advance" and "assign radio-channel to traffic...even if radio-signal channel are all occupied by

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traffics". In addition, Applicant's specification page 12 lines 19-21, discloses "*The OW state corresponds to a state in which the SCH resources supporting an existing SCH are not available for prospective assignment*". Therefore, Sonetaka does indeed teach Applicant's open waiting states.

Second: In response to applicant's arguments, the recitation "open waiting state" has not been given patentable weight because the recitation occurs in the preamble (see claim 1). A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Third: In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., *a scheduling state*) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

On pages 2 and 3 of applicant's remarks, applicant further argues that Sonetaka does not teach a data notice request for supplemental channel resources.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208

USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case, Barnes teaches applicant's "supplemental channels" (see examiner's answer above) and Sonetaka teaches receiving a data notify request indicating a request for channel resources (see column 4, lines 43-51. In addition, the teaching of Sonetaka in claim 1 above) and the combination of Barnes and Sonetaka does indeed teach applicant's claimed limitation.

On page 3 of applicant's remarks, applicant further argues that Sonetaka does not teach prospectively assigning currently unavailable supplemental channel resources.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case, Barnes teaches applicant's "supplemental channels" (see examiner's answer above), prospectively assigning channel resources are available for prospective assignment (see Barnes, column 17, lines 6-16, see "*preassigned backup channel*". Barnes' "*preassigned*" reads on Applicant's "*prospectively assigning*") and Sonetaka teaches prospectively assigning currently unavailable channel resources to support a future channel for a user associated with the received data notify request if the data notify request was received during an open assignment state during which the currently unavailable channel resources are available for prospective assignment (see Sonetaka, Abstract, "assigning channel preserved in advance" and "assign radio-

channel to traffic...even if radio-signal channel are all occupied by traffics", and column 4, lines 62-65, also see column 7, line 65 to column 8, line 2) and and the combination of Barnes and Sonetaka does indeed teach applicant's claimed limitation. In addition, applicant's claimed limitation recites "if", the term "if" means not actually happen. Therefore, the Examiner is not required to respond to this claimed limitation).

On page 4 of applicant's remarks, applicant further argues that there is no suggestion to combine Barnes and Sonetaka.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to do so found in the references themselves in order to assign radio channel to traffic having a high service rank (see Sonetaka, column 1, lines 50-53).

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nghi H. Ly whose telephone number is (571) 272-7911. The examiner can normally be reached on 8:30 am-5:30 pm Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marsha Banks-Harold can be reached on (571) 272-7905. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nghi H. Ly



CHARLES APPIAH  
PRIMARY EXAMINER